IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 414 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JOSHI JASVANTKUMAR VIRUBHAI THRO' RAMILABEN VIRUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MA PAREKH for Petitioner

MR.K.G.SHETH,Learned APP for Respondent No. 1

RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/09/2000

C.A.V. JUDGEMENT

1. The petitioner abovenamed has preferred this petition before this Court under Articles 21 and 226 of the Constitution of India challenging the orders of his externment dated 7.2.2000 passed by the Sub Divisional Magistrate in Externment Case No. 41 of 1999 under which

the petitioner was externed out of the limits of the area stated in the said order for a period of 2 years from the date of the order. The said order came to be confirmed in Appeal by the third respondent on 26.4.2000. The said two orders have been challenged by way of this petition.

2. It has been mainly contended here that no notice under Section 59 of the Bombay Police Act was served upon the petitioner and proceedings went ahead without any notice to the petitioner and, therefore, the petitioner was unaware of the allegations made against petitioner. Therefore, he couldnot defend his case in proper way. Therefore, there was clear case of violation of principle of natural justice and hence, the aforesaid orders suffer from the aforesaid infirmity. That the matter was carried in Appeal and the said ground was taken in the appeal but the appellate authority also did not consider the said aspects which also shows non application of mind. The petitioner has therefore challenged the orders of the two authorities.

3. On receiving the petition, rule was issued and Mr. K.G.Sheth, learned APP appeared for State. I have heard learned advocates for the parties and have perused the papers.

4. Now, it is clear contention of the petitioner that no notice was issued to the petitioner under Section 59 of the Bombay Police Act, 1951. If we go through the orders of the Sub Divisional Magistrate at page-16 then it can be gathered that there is no reference to the notice issued to the petitioner before commencing the said proceedings. If we go through the orders of the appellate authority at page-14, the first ground is that the petitioner was not served with the notice under Section 59 of the Bombay Police Act and therefore, there was not opportunity to defend the said proceedings. This point has not been dealt with in the said order dated 26.4.2000 at page-14. There is no other material on record to show that the petitioner was served with notice before commencing the proceedings against him.

5. In the aforesaid view of the matter, it is clear that there is clear violation of mandatory provisions of issuance of notice before commencement of proceedings. In that view of the matter, when statutory provisions are by-passed and violated, the orders passed in violation of such mandatory provisions cannot be sustained.

6. In the aforesaid view of the matter, it is also clear that neither the Sub Divisional Magistrate nor the

appellate authority has considered the aforesaid aspects of the case though the same was agitated before them. This shows non-application of mind with respect to law points canvassed before them. In the aforesaid facts and circumstances of the case, I am of the opinion that present orders under challenge cannot be sustained in view of the said illegality and, therefore, orders are required to be quashed and set aside.

7. In the result, present petition is allowed. The order of the Sub Divisional Magistrate at Mahesana passed on 7.2.2000 in Externment Case No. 41 of 1999 and confirmed in Appeal on 26.4.2000 by the third respondent are ordered to be quashed and set aside. Rule made absolute to the aforesaid extent. Direct Service is permitted.

(D.P.Buch,J)

(vipul)